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No. 86-104

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1986

THE BOARD OF AIRPORT COMMISSIONERS
OF THE CITY OF LOS ANGELES, et al.,
Petitioners,

VS.

JEWS FOR JESUS, INC., AND ALAN HOWARD SNYDER,
a.k.a. AVI SNYDER
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONERS' REPLY BRIEF

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I.

GOVERNMENT PROPERTY MAY BE PRESERVED FOR ITS INTENDED AND DEDICATED PURPOSES ONLY AND IS NOT REQUIRED TO BE USED FOR UNRELATED ACTIVITIES.

This case involves the ability of a government to restrict the uses of the interiors of the buildings under its control to those particular purposes to which the facilities were dedicated and intended and for which they are used. Specifically, the issue presented by this case is whether Petitioners constitutionally have limited the uses of the interiors of the airport terminal facilities at Los Angeles International Airport (hereinafter

"LAX" or "Airport") to their intended airport-related purposes only or whether Petitioners are required by the constitution to use those facilities for non-airport related activities.

This Court has repeatedly recognized that the government has the "power to preserve the property under its control for the use to which it is lawfully dedicated." *Greer v. Spock*, 424 U.S. 828, 836 (1976); *Perry Ed. Assn. v. Perry Local Ed. Assn.*, 460 U.S. 37, 46, 61 fn. 5.

Further, "[t]he guarantees of the First Amendment have never meant 'that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please.'" *U. S. Postal Service v. Greenburgh Civic Assn.*, 453 U.S. 114, 133 (1981); *Heffron v. ISKCON*, 452 U.S. 640, 652-653 (1981).

The determinative issue in this case is whether the interiors of the airport terminal facilities at LAX are classified as public forums or nonpublic forums. That classification is the deciding factor because it determines which of two very different standards with which Petitioners must comply when making decisions regarding the uses of the interiors of those facilities. *Cornelius v. N.A.A.C.P.*, 53 U.S.L.W. 5116, 5121, 87 L.Ed.2d 567, 582-583 (1985); *Perry Local Ed. Assn. v. Perry Local Ed. Assn.*, *supra*, at p. 46.

Petitioners are charged with managing the continuous operation and development of LAX. (Joint Appendix (hereinafter "J.A."), p. 7a, para. 2.) Petitioners consistently have had a long-standing policy and practice of limiting the uses of the interiors of the airport terminal facilities at LAX to their intended airport-related purposes only. (J.A., p. 11a, paras. 18-22; p. 15a, paras. 42-43; p. 17a, paras. 50-53.) Thus, Petitioners have permitted only those activities within those facilities that directly aid the traveling public. (J.A., p. 11a, paras. 20-21; p. 17a, paras. 50-53.) In this regard, the airport terminal facilities at LAX have been operated in a manner much different from that of airports or public buildings in which the operator has allowed unrelated activities to take place. In

order to clarify Petitioners' past policy and practice with regard to the appropriate uses of LAX and the interaction with First Amendment activities, Petitioners passed Resolution No. 13787, which reiterates their prior policy and practice, except that it specifies that activities protected by the First Amendment will be permitted on the sidewalk areas outside of the terminal facilities. (J.A., p. 17a. paras. 50-53.)

In following this policy and practice, Petitioners have attempted to preserve the facilities under their control to their dedicated and intended purposes while still exhibiting a sensitivity to constitutionally protected activities by permitting those activities to take place on the sidewalks. Respondents and others, however, believe they have an absolute right to use the interiors of the terminal facilities at LAX for other than their intended purposes and assert that Petitioners cannot restrict the activities within the interiors of those facilities to their intended airport-related purposes.

Petitioners adopted their policy with the clear intent to devote the facilities under their control to airport-related purposes. The intent of this policy is reinforced by Petitioners' past practice, which has been followed consistently, of permitting only those activities to take place within the terminals that are airport-related while denying permission to conduct all others. (J.A., p. 11a, paras. 19-21; p. 15a, paras. 40-43.) There is no hint that Petitioners adopted this policy for any reason other than restricting the uses of the facilities to their intended and dedicated purposes. There is no evidence or suggestion that the policy was adopted in opposition to Respondents' particular views or to prevent the expression of any other views protected by the First Amendment. Furthermore, there is absolutely no evidence that Petitioners have ever granted permission to anyone to use the interiors of the terminal facilities in the manner proposed by Respondents.

Most relevant in setting forth the appropriate analysis and law necessary to decide the issues presented are this Court's decisions in *Perry Ed. Assn. v. Perry Local Ed. Assn.*, *supra*, and *Cornelius v. N.A.A.C.P.*, *supra*. These cases most clearly

set forth the analysis that should be used to determine if a particular government facility is capable of being limited to its intended purposes only or has been opened as a public forum.

There is no dispute about whether Respondents' religious literature distribution is an activity protected by the First Amendment. Similarly, there is no dispute about what constitutes the relevant forum at issue. Clearly, it involves the interior of the airport terminal facilities at LAX. It is access to those areas that Respondents seek and "[w]hen speakers seek general access to public property, the forum encompasses that property." *Cornelius, supra,* at p. 5119, L.Ed.2d 579.

In deciding this case it is important to remember what is not at issue. This case does not involve the exterior sidewalk areas of the Airport because literature distribution is not restricted in those areas. (J.A., p. 17a, para. 53.) Likewise, this case does not involve Respondents seeking access to hotel or motel information boards or the right to rent space to provide a waiting room or some other airport-related service because Respondents do not seek that access or right to those or similar places. This case does not involve a question of whether Respondents were denied access to the interiors of the terminal facilities at LAX because of their particular message. The record is clear that Petitioners have denied all requests by all people for such general access for non-airport related activities. (J.A., p. 11a, paras. 19-21; p. 15a, paras. 40-43.) This case does not involve a restriction that, in any way, restricts Respondents' right to use the airport for its intended airport-related purposes.

Thus, this case turns on the question of whether the interiors of the airport terminal facilities at LAX are public forums or nonpublic forums.

II.

THE INTERIORS OF THE AIRPORT TERMINAL FACILITIES AT LAX ARE NOT TRADITIONAL PUBLIC FORUMS DEDICATED TO PUBLIC ASSEMBLY AND DEBATE.

This "Court has identified three types of fora: the traditional public forum, the public forum created by government designation and the nonpublic forum." *Cornelius v. N.A.A.C.P., supra,* at p. 5120, L.Ed.2d 589. Municipal streets, parks and other open places that by tradition and government fiat are devoted to assembly and debate are traditional public forums. Other government property becomes a public forum only by a designation or opening of that place by the government as a place for "communication for use by the public at large for assembly and speech . . ." *Cornelius, supra,* at p. 5120, L.Ed.2d 580; see also *Widmar v. Vincent, supra,* at pp. 267-268. This designated public forum is not created "by inaction or by permitting limited discourse, but only by [the government] intentionally opening a non-traditional forum for public discourse." *Cornelius v. N.A.A.C.P., supra,* at p. 5120, L.Ed.2d 580. "Public property which is not by tradition or dedication a forum for public communication" is a nonpublic forum and "is governed by different standards." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 46. In this nonpublic forum, "the State may reserve the forum for its intended purposes, communicative or otherwise . . ." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 46.

The Ninth Circuit has held that the interiors of airport terminal facilities are traditional public forums held in trust for public assembly and discussion of public questions. Under this conclusion, no airport operator, no matter now it operates its facilities or how it attempts to limit the activities therein, could ever reserve those facilities for their intended uses only.[1] Rather, all airport operators would be required to

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[1]Since traditional public forums are those held in trust for use by the general public for expressive purposes, the Ninth Circuit's opinion would

permit unrelated communicative activities, restraining them only by very narrowly tailored regulations that would serve a significant or compelling state interest.

Contrary to the Ninth Circuit's finding and Respondents' arguments, the interiors of the airport terminal facilities at LAX are not traditional public forums. The interiors of the terminal facilities at LAX, like the forum involved in *City Council v. Taxpayers for Vincent*, 466 U.S. 789, 814 (1984), have no "traditional right of access . . . for purposes of . . . communication comparable to that recognized in streets and parks . . ." The interiors of the facilities at LAX have no historical association with and dedication to the exercise of expressive activities. See, e.g., *U. S. v. Grace, supra*, at p. 177. There is no devotion to public assembly and debate of public questions. The Airport, like courthouses, hospitals or office buildings, was built and intended for its own respective purposes. Of course, areas within each of those buildings could be designated or opened as public forums but generally the interiors of those buildings are not held in trust to be used for purposes of assembly and debate of public questions. This conclusion is particularly clear with regard to government property that is designed and used for its non-communicative purposes because that property is generally intended for those purposes only. In all buildings, whether they were designed to permit expressive activity or not, communication takes place. Contrary to Respondents' argument, however, the fact that this communication occurs does not establish that the interior of the building is a traditional public forum or that it was opened as a forum. If the fact that communication occurred were all that was required, all buildings would be forums and the government could not reserve any of its buildings for their intended purposes only.

Both the Ninth Circuit and Respondents rely, in large part, on prior district and circuit court "airport cases" to support

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appear to prohibit an airport operator from allowing entrance to its terminal facilities to only ticketed passengers.

their conclusions that all airport terminal facilities are traditional public forums or, at least, that the interiors of the airport terminal facilities at LAX have been opened or designated as public forums. (Resp. Br., pp. 17-19.) It is submitted that the vast majority of these lower court "airport cases" are either inapplicable or totally irrelevant to the determinative public forum/nonpublic forum issue involved in this case. Most of the lower court cases relied on by Respondents involve the review of a time, place and manner restriction, which is an entirely different issue from that presented in this case. *Cornelius v. N.A.A.C.P., supra,* at p. 5121, L.Ed.2d 584.[2] The government facilities at issue in this case are the interiors of the terminal facilities at LAX, which have been operated in a manner much different from that of many other airports or government buildings. In contrast to some airports and other government-owned buildings, Petitioners have not allowed the interiors of the terminal facilities at LAX to be used for activities that do not relate directly to the intended purposes of those facilities.[3]

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[2]The test applicable when reviewing a time, place and manner restriction is whether the restriction is "content neutral, is narrowly tailored to serve a significant government interest, and leaves open ample alternative channels of communication." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 46; see also *Grayned v. City of Rockford,* 408 U.S. 104, 115 (1972). This Court has clearly explained that: "[i]n addition to time, place and manner regulations, the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 46. When the government does reserve the forum for its intended purposes only, the standard to be applied to the restriction is reasonableness and, thus, is much different from the standard applied to a time, place and manner restriction. *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 46.

[3]Petitioners limit the activities within the terminal facilities at LAX to only those that aid the traveling public. It is apparent from the photographic exhibits submitted to the trial court that the terminal facilities at LAX have not been used for indiscriminate advertising or for activities unrelated to the operation of the Airport. There are no advertising panels

A few of the lower court "airport cases" rely on the fact of public ownership or general public access as determinative of whether or not the interiors of airport terminal facilities are public forums.[4] Clearly, neither public ownership nor general public admission is determinative of the public forum/nonpublic forum issue. *Greer v. Spock, supra; Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at pp. 47-48. Likewise, it is not dispositive of the public forum/nonpublic forum issue to draw similarities between the hallways of the interiors of the airport terminal facilities at LAX to those open streets and parks of a municipality. There is no question that people use hallways, like streets and parks, to get from place to place.

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similar to those involved in *U.S.S.W. Africa/Namibia Trade Cultural Council v. U. S.*, 708 F.2d 760 (1983), involving Dulles Airport. Unlike the forum involved in *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* the forum involved here has not been used by church groups, cub scouts, or other groups to engage in non-airport related activities. See *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 39, n. 2, 47; J.A., p. 15a, paras. 42-43.

[4]Virtually all of the lower court "airport cases" rely on *Kuszynski, supra,* and *CAMP, supra.* These cases involved the review of time, place and manner restrictions, and, therefore, are of little utility in the determinative public forum/nonpublic forum issue involved in this case.

Even if *Kuszynski* or *CAMP* were viewed as relevant to the public forum issue, the apparent logic of those cases is no longer valid. The *Kuszynski* court essentially concluded that mere public ownership was the determinative issue. *Kuszynski, supra,* at p. 1131. The analysis used by the *CAMP* court can be summarized as follows: The airport is government owned and operated, the general public is admitted to the facilities, the airport facilities can accommodate seven people conducting non-airport related activities, and, therefore, the Airport Authority must allow the Plaintiffs to conduct their activities, limited only by a time, place and manner restriction. *CAMP v. Chicago, supra,* at p. 925.

Decisions by this Court have clearly held that the factors relied on by the courts in *Kuszynski* and *CAMP* do not lead to the conclusion that government facilities must be made available as public forums. *Greer v. Spock, supra; Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at pp. 46-47. What is important is the government's intention either to limit the facilities or to open the facilities. *Cornelius v. N.A.A.C.P., supra,* at p. 5120. See also *U. S. v. Grace, supra,* at pp. 177-178, and cases cited therein; *U. S. Postal Service v. Greenburgh, supra,* at pp. 129-130.

This similarity, however, cannot create a public forum, for if it did, the interiors of all public buildings that are open to the public would be public forums.

The interior hallways of the airport terminal facilities at LAX are clearly distinguishable from the streets and sidewalks of a city. There is no historical dedication of the hallways of the terminal facilities to public assembly and debate as there is with the open streets and parks of a municipality. Cf., *City Council v. Taxpayers for Vincent, supra,* at p. 814. In this case, the hallways of the Airport are an integral part of the airport terminal facilities because they are used to get from the streets and sidewalks to particular destinations within those facilities. The distinction between a municipality's open public streets and sidewalks and the internal walkways of the airport terminal facilities at LAX becomes more obvious upon the review of this Court's decisions in *U. S. v. Grace, supra,* and *Greer v. Spock, supra.*

In *U. S. v. Grace, supra,* at p. 179, the exterior sidewalk area surrounding the Supreme Court grounds was found to be indistinguishable from any of the other sidewalks in Washington, D.C., and thus was found to be a public forum. In *Greer v. Spock, supra,* at pp. 535-537, sidewalks and streets located on the military base, although fully open to unrestricted civilian access, were distinguishable from the open streets and parks of a municipality and were found not to be public forums.[5]

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[5]The present case presents a much stonger case for the conclusion reached in *Greer v. Spock.* In the present case, the exterior sidewalk areas of the terminal facilities at LAX, although distinguishable from the open sidewalks of a municipality, are not at issue. What is at issue are the interior hallways of the public facilities located on airport property. There is no evidence that Petitioners have abandoned their claim or right to restrict the interiors of the terminal facilities to their intended uses only. The streets and sidewalks of a military base, particularly those bases open to general public access, would appear to have more of the physical characteristics and similarities to those open streets and parks of a municipality than would the interior hallways of the airport terminal facilities at LAX. Yet those exterior sidewalk areas of army bases are not

This case involves the questions specifically left unanswered in *U. S. v. Grace*, *supra*, at p. 178, i.e., whether the interior of a building that is publicly owned and that has not been traditionally held open for expressive activities, may be preserved for its intended purposes and may have banned all other unrelated activities, including expressive activities. *U. S. v. Grace*, *supra*, at p. 178.

The interiors of the airport terminal facilities at LAX can be more easily likened to the interiors of courthouses than they can to the open streets and parks of a municipality. Courthouses, like terminal facilities, have important purposes and functions unrelated to public assembly for expressive purposes. Yet, in both, the public is generally free to enter, may talk of unrelated things, and in fact, may be there just to "pass the time." These factors no more make courthouses public forums than they do the interiors of the airport terminal facilities at LAX.

The mere fact that the interiors of the airport terminal facilities at LAX, like streets and parks, are used to get from one place to another, does not make those interiors traditional public forums. If that mere similarity were all that were necessary, then the hallways of all public buildings would be traditional public forums and the government could never reserve the interiors of buildings for their intended, non-communicative purposes. Respondents have failed to show the necessary tradition or historical dedication of the interiors of the airport terminal facilities at LAX to unrelated, communicative purposes. Without such a showing, the interiors of those terminals, dedicated to their travel-related non-communicative purposes, are not traditional public forums.

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traditional public forums. The facts in this case present a much stronger argument for a similar conclusion.

III.

THE INTERIORS OF THE AIRPORT TERMINAL FACILITIES AT LAX HAVE NOT BEEN OPENED OR DESIGNATED AS PUBLIC FORUMS.

There is no question that the interiors of airport terminal facilities can be opened by the operator to public speech and debate. Some airport and other government buildings have clearly been opened for those purposes. See, e.g., *U.S.S.W. Africa/Namibia v. U. S., supra,* at p. 765. Such an opening, however, is not constitutionally mandated. If it were, no government property could be reserved for its intended purposes only and this Court's repeated statements that a government may reserve its facilities to their intended purposes would be meaningless. This "opening" of a facility, particularly the interior of a building dedicated to non-communicative purposes, must be accomplished by clear government action. *Cornelius v. N.A.A.C.P., supra,* at p. 5120, L.Ed.2d 580; see, e.g., *Widmar v. Vincent, supra,* at pp. 267-268. The government must intend to open and actually open its facility to speech and debate. *Cornelius v. N.A.A.C.P., supra,* at p. 5120, L.Ed.2d 580.

Clearly, Petitioners in this case have not intended to open, nor have they in fact opened, the interiors of the terminal facilities at LAX to any activities other than those that directly aid the traveling public. (J.A., p. 11a, paras. 19-21.) Rather, Petitioners have specifically limited, by both policy and practice, the uses of the interiors of the terminal facilities at LAX to only those activities that are airport-related. (J.A., p. 11a, paras. 19-21; p. 15a, para. 40; p. 17a, para. 50.) It is abundantly clear that this reservation of the terminal facilities at LAX for their intended purposes is constitutionally permissible.

The fact that communication occurs within a facility, by itself, does not open the facility as a public forum. Likewise, the fact that the general public is freely admitted to the facilities or that some people have conducted protected activi-

ties within those facilities does not establish the opening of a public forum. *Perry Ed. Assn. v. Perry Local, supra,* at pp. 47-48; *Greer v. Spock, supra,* at p. 838, n. 10.

Regardless, Respondents argue that the interiors of the airport terminal facilities at LAX have been opened as public forums because communication takes place within those terminals.[6] The fact that communication occurs or has not been prohibited by Petitioners does not indicate any intent to open the terminal facilities to non-airport related activities. These activities are merely examples of activities that take place in all public or private buildings. Petitioners, in limiting the uses of the buildings under their control to their intended and dedicated purposes, have not attempted to interpret people's thoughts, to limit people's conversations to airport-related subjects or to discern a person's intent when he or she wears particular types of clothing. Rather, Petitioners have sought to limit the activities authorized to only those that directly aid the traveling public and to prohibit other clearly non-airport related activities. (J.A., p. 11a, paras, 19-21; p. 15a, paras. 40-43; p. 17a, paras. 50-54.) Thus, Petitioners restrict people, like Respondents, from conducting activities that are clearly non-airport related while still allowing the traveling public to pass the time by engaging in conversations or reading the paper.

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[6]Respondents state that some people enter the terminals wearing clothing imprinted with slogans that attempt to make a "statement," that people also use telephones and read newspapers while in the terminal facilities, and that newspapers and books are sold within the terminals. Each of these activities, in one context or another, has been held to be an activity protected by the First Amendment. To cite the occurrence of these activities, however, as evidence that the interiors of the terminal facilities have been "opened" as public forums is ludicrous. The fact that these types of activities occur does not transform the interiors of any government-owned buildings, including the terminal facilities at LAX, into either traditional or opened public forums.

IV.

PETITIONERS' PRACTICE OF LIMITING THE USES OF THE INTERIORS OF THE TERMINAL FACILITIES AT LAX TO AIRPORT-RELATED PURPOSES ONLY IS A REASONABLE WAY TO OPERATE THE AIRPORT.

If, as Respondents argue, the interiors of the terminal facilities at LAX are public forums, then each decision or policy regarding the uses of those facilities must pass a strict scrutiny test establishing each time that a decision denying access serves a compelling state interest and is the least restrictive means available to serve the government's interest in operating its facilities for their intended, non-communicative purposes.

Since the interiors of the airport terminal facilities at LAX are not public forums, the appropriate test to apply when examining Petitioners' policy limiting the uses of the interiors of those facilities is whether or not that policy is reasonable. *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 46. The test is not, as Respondents argue, whether the policy is the least restrictive one, whether airport officials can exercise some discretion or whether Respondents' particular activities would not be disruptive of the purpose of the building. Rather, the standard to be applied is clearly set forth in *Cornelius*, wherein this Court stated:

> "The Government's decision to restrict access to a nonpublic forum need only be reasonable; it need not be the *most* reasonable or the *only* reasonable limitation. In contrast to a public forum, a finding of strict incompatibility between the nature of the speech or the identity of the speaker and the functioning of the nonpublic forum is not mandated." *Cornelius v. N.A.A.C.P., supra,* at p. 5121, L.Ed.2d 584. (Emphasis added.)

This reasonableness standard, applicable when a government limits the uses of its facilities to their intended purposes, gives the government the necessary latitude in making decisions about the operation of its facilities for their intended

and dedicated purposes. *U. S. Postal Service v. Greenburgh Civic Assn., supra*, at p. 133. The mere fact that a facility can be used for unrelated, expressive activities does not require that it must be made available for those unrelated activities. *City Council v. Taxpayers for Vincent, supra*, at p. 814. The fact that the public is freely admitted to a facility does not require that it be opened to expressive activities. *City Council v. Taxpayers for Vincent, supra*, at p. 814; *U. S. v. Grace, supra*, at p. 77.

Likewise, even if Petitioners were found to have granted some access for expressive purposes because they have permitted airport-related activities that might be expressive in nature, this "selective access does not transform government property into a public forum." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra*, at p. 47. As in *Perry* "[t]here is no court finding or evidence in the record which demonstrates that this permission has been granted as a matter of course to all who seek to distribute material." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra*, at p. 47. There is no finding or evidence in the record that any person or group has been granted permission by Petitioners to do that which Respondents wish to do.[7]

In this regard, it is submitted that Petitioners' policy limiting the uses of the terminal facilities to their intended purposes is far more reasonable than the policy upheld by this Court in *Perry, supra*. In *Perry*, a variety of public service groups who were generally disassociated from the school had, in fact, used the claimed public forum. In this case, there is no

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[7]A large number of groups and individuals have sought permission to use the interiors of the terminal facilities at LAX to achieve their non-airport related objectives. The reasonableness of and justification for the Petitioners' policy must be analyzed with the recognition that the Airport's functions would be seriously disrupted by the activities of all the groups who wish to use the terminal facilities to expound their views on a myriad of subjects. *Heffron v. ISKCON, supra*, at pp. 653-654; *City Council v. Taxpayers for Vincent, supra*, at p. 793, *Clark v. Community for Creative Non-Violence*, 52 U.S.L.W. 4987, 4988, 468 U.S. _____, 82 L.Ed.2d 221, 229, 104 S.Ct. _____ (1984).

such situation. The authorized uses of the Airport have always been limited to airport-related purposes and the pursuit of other purposes by other groups has been prohibited.

Thus, it is submitted that limiting the uses of the terminal facilities at LAX to those that directly aid the traveling public is eminently reasonable and is not an attempt to suppress Respondents' or anyone else's views but is, rather, an exercise of Petitioners' right to limit the uses of the terminal facilities at LAX to their dedicated and intended purposes.

If, as Petitioners contend, and this Court's cases support, the interiors of the airport terminal facilities at LAX are not traditional public forums dedicated to unrestrained speech and expression, then Petitioners had the option to limit the uses of their facilities to their intended purposes only and to make the necessary decisions to achieve that goal or to open their facilities as public forums and to make decisions according to the rules applicable when controlling a public forum. *Cornelius v. N.A.A.C.P., supra*, at p. 5121, L.Ed.2d 584. Electing to reserve their facilities to their intended purposes is a reasonable way to operate airport facilities that are held in trust and required to be used for airport-related purposes only.

V.

PETITIONERS' POLICY AND PRACTICE OF LIMITING THE USES OF THE INTERIORS OF THE TERMINAL FACILITIES AT LAX TO AIRPORT-RELATED PURPOSES ONLY DOES NOT RESULT IN IMPERMISSIBLE DISCRETION OR CONTENT OR RELIGIOUS DISCRIMINATION.

In *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* this Court explained that:

> "... Implicit in the concept of the nonpublic forum is the right to make distinctions in access on the basis of subject matter and speaker identification. These distinctions may

> be impermissible in a public forum but *are inherent and inescapable in the process of limiting a nonpublic forum* to activities compatible with the intended purpose of the property. The touchstone for evaluating these distinctions is whether they are reasonable in light of the purpose which the forum at issue serves." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 49. (Fn. omitted. Emphasis added.)

In order to reserve its property to its "official business," a government entity must have the ability to determine what its official business is, to determine what activities further that business, and to reasonably make decisions about whom may participate in that official business.

Respondents have argued that Petitioners' policy limiting the uses of the terminal facilities to airport-related purposes only, is content-based and/or religious discrimination,[8] operates as a prior restraint and grants too much discretion to Petitioners. Respondents' arguments ignore the nature of a nonpublic forum and, if followed, would prevent any and all government entities from preserving their property for their lawfully dedicated purposes.

Petitioners, acting pursuant to the mandate of the Los Angeles City Charter, consistently have limited the uses of the Central Terminal Area (hereinafter "CTA") of LAX to those activities that directly aid the traveling public. (J.A., pp. 9a-11, paras. 16, 17, 19, 20 and 21.) Non-airport related commercial activities are not permitted anywhere within the CTA while non-airport related activities protected by the First

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[8]Respondents repeatedly cite the Christian Science Reading Room to take advantage of the word "Christian" in the lessee's name. (Resp. Br., pp. 3, 5, 7, 8, 9, 11, 31, 32, 40, 44, 46.) This attempt, however, completely ignores that the Reading Room is a leased area that provides a waiting room for the traveling public. The critical issue is not the name of the entity that leases the space but, rather, whether the purpose for which the area is used is airport-related. It is abundantly clear that providing a waiting room for use by the traveling public is airport-related.

Amendment are not permitted within the interiors of the terminal facilities but can take place on the sidewalk areas immediately adjacent to those facilities. It is important to note that Petitioners are *regulating activities* on the property under their control. They have not directed their prohibition only to expressive activities but, rather, distinguish between airport and non-airport related "activities." Thus, Petitioners have limited the uses of the interiors of the terminal facilities at LAX to only those activities that directly aid or are necessary to the traveling public and have prohibited all others. (J.A., p. 11a, para. 19; p. 17a, para. 51.) They have limited the activities within the terminal facilities at LAX to the "official business" of the airport.

Some of the airport-related activities permitted by Petitioners involve communication among people, the imparting of information by people in the terminals to other people there, and other activities that have been held, in one context or another, to be activities protected by the First Amendment. The fact that these activities occur and that Respondents' unrelated religious activities are disallowed does not make the facility a public forum; nor is it evidence that there is impermissible content-based discrimination, prior restraint, or viewpoint discrimination being exercised by Petitioners against Respondents' particular views.

This Court has recognized that distinctions in access based on subject matter and speaker identification are "inherent and inescapable" in limiting a nonpublic forum to its intended activities. *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 49. Such a right to ". . . draw distinctions which relate to the special purpose for which property is used. . .," *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 55, is necessary if a government is going to be able to reserve its facilities for their intended purposes.

Regardless of this, Respondents claim a right to use the interiors of the terminal facilities at LAX for their own religious, non-airport related purposes. They claim that an airport operator must make the interiors of its airport termi-

nal facilities available for activities other than those for which the facilities were intended or to which they are dedicated.

As has been shown, Petitioners have legitimately limited the facilities under their control to their lawfully dedicated purposes because the interiors of the airport terminal facilities at LAX are nonpublic forums. Because the facilities are nonpublic forums, Petitioners can "without further justification — restrict use to those who participate in the forum's official business." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 52. (Fn. omitted.)

Petitioners' policy and practice of limiting the uses of the interiors of those facilities to airport-related purposes only and disallowing all others, including Respondents' religious activities, is clearly not a decision based on Petitioners' opinion of Respondents' particular views. There is no hint or claim of covert censorship in the adoption or application of Petitioners' policy. Rather, Petitioners' policy is one that is used to limit the uses of the Airport to its intended purposes only and to allow only those activities within the Airport that will directly aid the traveling public. Such a policy is both reasonable and constitutional.

VI.

PETITIONERS ARE NOT CONSTITUTIONALLY REQUIRED TO USE THE INTERIORS OF THE AIRPORT TERMINAL FACILITIES AT LAX AS PUBLIC FORUMS BUT, RATHER, CAN RESERVE THOSE FACILITIES FOR THEIR INTENDED AIRPORT-RELATED PURPOSES ONLY.

This Court has stated repeatedly that a government entity "has the power to preserve the property under its control for the use to which it is lawfully dedicated." *Greer v. Spock, supra,* at p. 846; *U. S. Postal Service v. Greenburgh Civil Assn., supra,* at p. 129.

Furthermore, a government is not required to open all of its facilities for unrelated public exprssion but rather may ban the entry onto public property ". . . of all persons except those who have legitimate business on the premises." *U. S. v. Grace, supra,* at p. 178.

Petitioners have done nothing more than what this Court has said is constitutionally permissible. They have exercised their right to reserve their property for its intended purposes and to draw the necessary distinctions that relate to the special purposes for which their property is used. *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 55. Petitioners have allowed only those activities to take place that directly aid the traveling public. (J.A., p. 11a, paras. 19-21; p. 17a, para. 51.) Clearly, Respondents' religious activities do not fall within that airport-related category and, because those activities are not part of the official business of the Airport, their and all other non-airport related activities constitutionally may be prohibited.

CONCLUSION

Based on the foregoing, Petitioners respectfully request that this Court reverse the judgment of the United States Court of Appeals for the Ninth Circuit and hold that the interiors of the terminal facilities at Los Angeles International Airport are not public forums and that Petitioners' policy restricting the use of those facilities to airport-related purposes only is constitutionally permissible.

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On February 23, 1987, I served the within Petitioners' Reply Brief in re: "The Board of Airport Commissioners vs. Jews for Jesus, Inc." in the United States Supreme Court October Term 1985, No. 86-104;

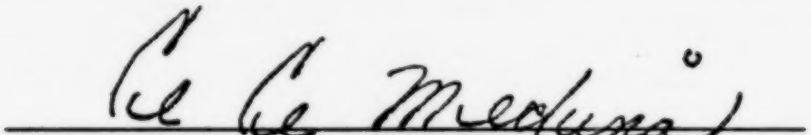
on the Parties in said action, by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Andrew Ekonomau
515 Rhodes Haverty Building
134 Peachtree Street N.W.
Atlanta, Georgia 30303
(Hand Delivered)

All Parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on February 23, 1987, at Los Angeles, California.



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